

| |
|--------------------------------------|
| COMPLIANCE BOARD OPINION 93-8 |
|--------------------------------------|

July 16, 1993

Ms. Judith A. Robinson

The Open Meetings Compliance Board has considered your complaint dated April 20, 1993, in which you allege violations of the Open Meetings Act by the Prince George's County Council in connection with a meeting on March 31, 1993.

Your complaint alleges that the Prince George's County Council held a closed session on that date to discuss the County budget. Proper notice of the meeting was not given, your complaint alleges. Furthermore, you point out that the meeting was not held at the customary site for County Council meetings, and you suggest that the site of the March 31 meeting might have been chosen "in an attempt to secret this meeting and the results of discussions on the budget from public view."

In a timely response on behalf of the County Council, Chairwoman Hilda R. Pemberton described a newly initiated process for County Council review of the County's budget. In essence, various committees were assigned responsibility for the review of agency budgets in order to aid the full Council in its final review and approval. The March 31 meeting marked the beginning of "Stage II" of the review process, during which various committees would review portions of the proposed budget of the County Executive.

The March 31 meeting lasted approximately five hours, including a working lunch. Chairwoman Pemberton summarized the meeting as follows:

Each Committee Chair was asked to provide a brief overview of their committee's ... progress and what types of follow-up information had been received or [that they] would be receiving. During each overview, staff provided budget information contained in the County Executive's Proposed FY 1994 budget. After each overview, the Committee Chair indicated his or her advice as to which agencies required the additional Stage II budget review and which agencies could skip the Stage II review.

The meeting included a working lunch with a presentation by the County Executive. His presentation included his reasons for proposing certain budget levels for certain agencies, his concerns about Board of Education student performance and his desire focus public debate on the need to develop a Countywide approach to end Court ordered busing.

After lunch, the Committee Chair presentations continued.

Ms. Pemberton states that the Council intended "to have this meeting appropriately posted as an open meeting." Because of an error said to have been made within the Office of the Clerk of the Council, the notice was not posted prior to the meeting. The site of the meeting, away from the Council's chambers, "was selected to allow Council Members to be away from their office phones and office staff interruptions in an effort to give maximum attention to the meeting."

Under the Open Meetings Act, any part of the process by which the County Council approves, disapproves, or amends the County's budget must be open to the public unless one of the specific exceptions in the law applies. The budget preparation process, including the earliest stages of information-gathering, is a "quasi-legislative function" encompassed by the Act. §10-502(j)(2).

When the County Council decided that it needed a meeting to organize its "Stage II" review, it had a duty to provide proper public notice of the meeting. §10-506(a). Mistakes, of course, do happen, but a public body should take steps to ensure that notice of a meeting not be omitted by a mistake. Some follow-up to verify the posting should be routine. In this instance, the County Council must be held accountable for its failure to provide notice required by the law. Accordingly, the Compliance Board finds that the County Council violated §10-506(a), which requires a public body to "give reasonable advance notice" of any meeting encompassed by the Act.

Furthermore, the Compliance Board finds that the County Council violated §10-505, which provides that "[e]xcept as otherwise expressly provided in this subtitle, a public body shall meet in open session." An open session means that members of the public are, as a practical matter, able to attend. Given the lack of notice and the unusual site, the March 31 meeting was in practical effect closed to the public, even if theoretically someone who chanced upon the meeting would have been permitted to attend.

Whatever its intentions, the County Council in fact held a secret meeting. The public was thereby deprived of its entitlement to witness a phase of the Council's budget review process, in violation of the Open Meetings Act.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
Tyler G. Webb